

# AGREEMENT

PSC 2008-\_\_\_\_\_

THIS PROFESSIONAL SERVICE CONTRACT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **GREATER LOUISVILLE WORKFORCE INVESTMENT BOARD, INC., d/b/a KENTUCKIANAWORKS ("KW")**, and **PERITUS PUBLIC RELATIONS, LLC** with offices located at 200 S. Fifth Street, Suite 503N, Louisville, KY 40202, ("**CONSULTANT**").

## WITNESSETH:

**WHEREAS**, KW is in need of certain professional services with respect to internal and external communication strategies; and

**WHEREAS**, the Consultant has been determined by KW to have the necessary experience, expertise and qualifications to provide those services;

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

### I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of KW, provide services under the terms of this Agreement. The Consultant's work product may be reviewed from time to time by KW for purposes of determining that the services provided are within the scope of this Agreement.

B. Consultant, while performing the services rendered pursuant to this Agreement, may utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services.

C. If from time to time Consultant needs to utilize the records or personnel of KW in performing the services required in this Agreement, then Consultant shall notify the proper agent of KW and arrangements may be made to provide the necessary records or personnel. However, at no time shall KW make available its resources without the full consent of both parties.

D. The services of Consultant shall include but not be limited to the following. Consultant will assist KW and its network of contractors with effective internal and external communication strategies to raise awareness of the role played by KW in the community and to help KW sustain and grow its programs and services. Consultant shall provide assistance with communication strategies in areas requested by KW, including but not limited to:

- Public Relations
- Marketing
- Design
- Brand Development
- Media Relations
- Web Site Development
- Consulting
- Special Event planning and execution
- Community Outreach
- Communications plan development and implementation
- Fundraising

## **II. FEES AND COMPENSATION**

**A.** Consultant shall be compensated for services rendered according to the terms of this agreement at Consultant's regular hourly rates. Total compensation payable to Consultant for services rendered pursuant to this agreement, including out-of-pocket expenses, shall not exceed the sum of **\$100,000.00**. Hourly rates shall not exceed \$150 per hour and shall be based on Consultant's regular fee schedule.

**B.** Unless otherwise agreed in writing by KW, services shall be rendered and payment shall be made monthly throughout the duration of this agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described above.

**C.** Consultant shall only be reimbursed out-of-pocket expenses if such expenses are reasonable in amount and necessary to accomplish the scope of services of this contract. KW will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. KW reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

**D.** Consultant, to the extent that it provides the same or related services to third parties agrees to pro-rate its billings and out-of-pocket expenses to KW which are of benefit to the third parties and to provide documentation to all parties to verify the

pro-ration of such billings and expenses. In no event will KW pay bills or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

### **III. DURATION**

A. This is a professional service contract which shall begin September 1, 2008 and shall continue through and including June 30, 2009.

B. This Agreement may be terminated without cause by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. In the event of termination without cause, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

C. This Agreement may be terminated at any time for cause by KW upon breach of any provision of this Agreement by Consultant. KW shall provide written notice of termination to Consultant specifying the termination date and time. If KW terminates this Agreement for cause, KW shall have the right to withhold any payments due under this Agreement and KW may pursue its remedies in law or equity through all appropriate legal action.

### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this agreement nor does it cause Consultant to be an officer or official of KW. By executing this agreement, the parties hereto certify that Consultant's performance will

not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

## **V. RECORDS-AUDIT**

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's fees and costs which are chargeable to KW under this Agreement; and KW shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include without limitation: (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

## **VI. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of Consultant (and Consultant's Subcontractors) in accordance with Schedule A attached hereto.

## **VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

Consultant agrees to indemnify, hold harmless, and defend KW and the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act or omission of the KW and Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

## **VIII. REPORTING OF INCOME**

The compensation payable under this Agreement is subject to federal, state and local taxation. Regulations of the Internal Revenue Service require KW to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish KW with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to KW as may be required by the IRS or the State Department of Revenue.

## **IX. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

## **X. AUTHORITY**

The Consultant, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, and has full right, power and authority to enter into this Agreement.

## **X. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party.

Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.



(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

## **XI. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS**

The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.


## **XII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or


supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

**WITNESS** the signatures of the parties to this Agreement. These signatures apply to PSC 2008-\_\_\_\_\_.

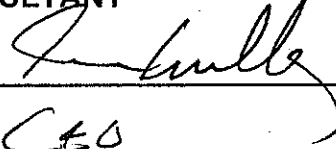
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Assistant County Attorney  
Date: 9/23/08

**KENTUCKIANAWORKS**

  
\_\_\_\_\_  
MICHAEL GRITTON, Executive Director  
Date: 10/9/08

**CONSULTANT**

By:   
\_\_\_\_\_  
Title: CEO  
\_\_\_\_\_  
Date: 9/29/05  
\_\_\_\_\_

**Taxpayer Identification No.**  
(TIN): \_\_\_\_\_

**Louisville/Jefferson County**  
**Revenue Commission Account**  
No.: \_\_\_\_\_

## SCHEDULE A

### I. INSURANCE REQUIREMENTS

Prior to commencing work, Consultant shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. **The Consultant shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division.** *The Consultant shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Consultant evidencing proof of coverages.*

Without limiting Consultant's indemnification requirements, it is agreed that Consultant shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and *require subcontractors, if subcontracting is authorized, to procure and maintain these same policies* until final acceptance of the work by KW. KW may require Consultant to supply proof of subcontractor's insurance via Certificates of Insurance, or at KW's option, actual copies of policies.

A. The following clause shall be added to the Consultant's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors, and KW, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract:

1. COMMERCIAL GENERAL LIABILITY, via the **Occurrence Form**, with a **\$1,000,000** Combined Single Limit for any one Occurrence for Bodily Injury, Personal Injury and Property Damage, and \$2,000,000 aggregate including:
  - a. Premises - Operations Coverage
  - b. Products and Completed Operations
  - c. Contractual Liability
  - d. Broad Form Property Damage
  - e. Independent Contractors Protective Liability
  - f. Personal Injury

2. WORKERS' COMPENSATION (If Applicable) insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - **\$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

## II. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "B+ VI", unless proper financial information relating to the Company is submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division.

## III. MISCELLANEOUS

- A. The Consultant shall procure and maintain insurance policies as described herein and for which Louisville/Jefferson County Metro Government's Risk Management Division shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include provisions stating that the policies may not be cancelled without Louisville/Jefferson County Metro Government's Risk Management Division having been provided at least (30) thirty days written notice. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to the Louisville/Jefferson County Metro Government's Risk Management Division at least 30 days prior to the expiration of any policy(s). Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government  
Finance Department, Risk Management Division  
611 West Jefferson Street  
Louisville, KY 40202

- B. The Consultant agrees that it will not materially alter any of the insurance policies currently in force and relied on under this agreement. Further, the Consultant will not reduce any coverage amount below the limits required in this agreement.
- C. Approval of the insurance by Louisville/Jefferson County Metro Government's Risk Management Division shall not in any way relieve or decrease the liability of the Consultant hereunder. It is expressly understood that the Louisville/Jefferson County Metro Government's Risk Management Division does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Consultant.

**CONTRACT DATA SHEET**PSC Type (check one): ☒ New ☐ Renewal ☐ Addendum**Contractor Information**

1. Legal Name of Contractor: Peritus Public Relations, LLC
2. Address: 200 South Fifth Street, Suite 503N
3. City/ State & Zip: Louisville, KY 40202
4. Contact Person Name & Telephone Number: Matt Willinger 502-585-3919
5. Revenue Commission Taxpayer ID#: 609
6. If registration is not required please explain:
7. Is account in good standing: Yes
8. Federal Tax ID # (SSN if sole proprietor): 71-1111111

**Department Information**

9. Requesting Department: Workforce Investment Board, dba KentuckianaWorks
10. Contact Person Name & Telephone: Michael Dunbar 643-7452

**Contract Information**

11. Not to exceed amount: \$100,000
12. Are expenses reimbursed? Yes ( Misc. Travel – Not to Exceed \$2,000 )
13. If yes list allowable expenses and maximum amount reimbursable:
14. Beginning and ending date of the contract: 9-1-08 through 6-30-09
15. Coding: 2551 -505 -2031 -203630 -521301
16. Scope & Purpose of the contract:

Peritus will assist KentuckianaWorks in all aspects of implementing an effective communications strategy.

**Authorizations**

County Attorney Review - Approved as to Form.

Department Director: Date: \_\_\_\_\_

Signature certifies:

- ☐ Yes Funds are available
- ☐ Yes Contractor is registered and in good standing with the Revenue Commission
- ☐ Yes Human Relations Commission registration requirements have been met

Risk Management Division of Finance - Certifies Insurance requirements satisfied: 10-13-08

Cabinet Secretary: N/A Date: \_\_\_\_\_  
(If applicable)

**WRITTEN FINDINGS****Peritus Public Relations, LLC      9-1-08 through 6-30-09****EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC**

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation for PSC Contract # \_\_\_\_\_. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

\_\_\_\_\_ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **\*\* Mayors Approval required for emergency purchases exceeding \$10,000.**

\_\_\_\_\_ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

    X     C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

\_\_\_\_\_ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

\_\_\_\_\_ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

\_\_\_\_\_ F. The contract is for proprietary items for resale.

\_\_\_\_\_ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.

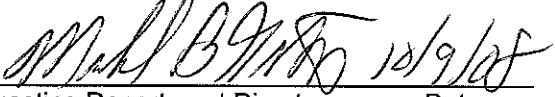
\_\_\_\_\_ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

\_\_\_\_\_ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

\_\_\_\_\_ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

\_\_\_\_\_ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

\_\_\_\_\_ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

 10/9/08  
Requesting Department Director      Date

\_\_\_\_\_  
Cabinet Secretary      Date  
(When required by cabinets policy)

\*\*Mayor      Date

**\*\*Signature is required only for Written Finding A**

RESOLUTION NO. \_\_\_\_\_, SERIES 2008

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED NEW PROFESSIONAL SERVICE CONTRACT - (PERITUS PUBLIC RELATIONS, LLC - \$100,000.00).

Sponsored By: \_\_\_\_\_

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

**SECTION I:** The following appropriation for the listed contract is hereby approved:

**KENTUCKIANAWORKS**

Not to exceed \$100,000.00 for a new noncompetitively negotiated Professional Service Contract between the Greater Louisville Workforce Investment Board, Inc., d/b/a KentuckianaWorks, with **PERITUS PUBLIC RELATIONS, LLC**, for assistance with public relations, from September 1, 2008 to June 30, 2009.

**SECTION II:** This Resolution shall take effect upon its passage and approval.

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

\_\_\_\_\_  
Jim King  
President of the Council

\_\_\_\_\_  
Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_